No. 209

FILED
AUG 19 195
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

October 1952 Term.

MICHAEL M. WEISS,

Petitioner,

AGAINST

K. McKINLEY SMITH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

FREDERICK E. WEINBERG,
Attorney for Respondent,
450 Seventh Avenue,
New York, N. Y.

HYMAN R. FRIEDMAN,
Of Counsel.

LOEBB APPEAL PRESS, INC., 65-67 Duane St., N. Y. C., Tel. WOrth-2-0689

INDEX.

	PAGE
Statement of Case	1
Facts	2
POINT I.—Petitioner's prayer for the issuance of a writ of certiorari should be denied, since petitioner has failed to demonstrate any of the requisite grounds therefor	9
POINT II.—The District Court, acting within its equity jurisdiction, had the discretion to either deny plaintiff any specific performance whatsoever, or to condition same, as it did, on the performance by plaintiff of his part of the bargain	11
POINT III.—The least protection to which defendant was entitled were the conditions decreed by the trial Court and affirmed by the Circuit Court	19
POINT IV.—Petitioner has not been deprived of any rights. No question of "due process" is involved	27

CASES CITED.

Re American Fibre Chair Corp., 272 N. Y. S. 206	17
Binon v. Forsyth, 64 N. Y. S. II 367 aff'd 59 N. Y. S. II 902	19, 26
Bonner v. Gorman, 213 U. S. 86, 53 L. ed. 709	30

PAGE

Bowen v. Hockley, 71 F. 2d 781 (4th Cir.) 20
Brightman v. Bates, 175 Mass. 105, 55 N. E. 809 (Holmes, Ch. J.) 19
Buchalter v. Rude, 54 F. 2d 834—10th Cir. 20
Burnes v. Burnes, 137 F. 781 21
Butler v. Standard Milk, 146 A. D. 735, 131 N. Y. S 451 (1st Dept.), (foreign corp.) 25

Central Ky. Nat. G. Co. v. Railroad Company, 29(U. S. 264, 78 L. Ed. 307 20
City of La Follette v. La Follette Water, Light & Telephone Co., 252 Fed. 762 (6th Cir.) 22, 26
Clark v. Dodge, 269 N. Y. 410 ..... 17, 26
Corrigan v. Buckley, 271 U. S. 323, 70 L. ed. 969 . 30
Cronen v. Moore, 210 Fed. 239—9th Cir. 21, 22

Denson v. Mapes, 71 Fed. Supp. 503 aff'd 166 Fed 2nd 322 16

Eisenberg v. Rodless, 106 N. Y. S. II 822 17
Elm Corp. v. E. M. Rosenthal Jewelry Co., 16 F. 2d 902 (C. A. Dist. Col.) 20
Enfeld v. Diamond, 51 N. Y. S. II 113 16

Federal Oil Co. v. Western Oil Co., 121 Fed. 67 C.C.A. Seventh 13

Gotthelf v. Stronahan, 138 N. Y. 345 14

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 2- U. S. 250, 60 L. Ed. 629 9
Hecht Company v. Bowles, 321 U. S. 321, 88 L. E 755 19
Hyer v. Richmond, 168 U. S. 471, 42 L. ed. 547 16

PAGE

Jamison Coal & Coke v. Goltra, 143 Fed. 2d 889, (CCA) 12
Jones v. Missouri Edison Electric Co., 144 Fed. 765—8th Cir..... 20

Kinney Coastal Oil Co. v. Kuffer, 277 U. S. 487, 72 L. Ed. 961 20
Kronenberg v. Sullivan County Laundry, 91 N. Y. S. II 144 17

Layne & Bowler Corp. v. Western Well Works, 261 U. S. 388, 67 L. ed. 712 10
Levy v. Kriss, 285 F. 836 cert. denied 69 L. Ed. 462 23
Lynch v. Burt, 132 F. 47..... 20, 23

Martocci v. Martocci, 42 N. Y. S. II 223 aff'd 206 A. D. 840, 43 N. Y. S. II 516..... 19, 26
Matter of Allen Jr. etc. (Wickwire Spencer Steel Co.) N. Y. Sup. Co. N. Y. Co., McGeehan, J., N. Y. L. J. 4/23/42, p. 1716 (foreign corp.) ... 25
McIntosh v. Leisk, 95 Fed. II, 164 C.C.A. 5th..... 13
McLaughlin v. Leonhardt, 77 A 647 (Md.)..... 15
McQuade v. Stoneham, 258 N. Y. S. 431 aff'd 262 N. Y. S. 966 rev'd other ground..... 16
McQuade v. Stoneham, 230 A. D. 57, 242 N. Y. S. 548 (1st Dept.) 25
McQuade v. Stoneham, 256 N. Y. S. 431 reversed on other grounds 263 N. Y. 323..... 25
Meinhard v. Salmon, 249 N. Y. 458..... 23
Miller v. Vanderlip, 285 N. Y. 116..... 19

Ohio ex rel Seney v. Swift & Co., 290 U. S. 146, 67 L. ed. 176 9
Overfield v. Penroad Corp., 42 Fed. S. 586..... 20, 21
Owens v. Battenfield, 33 Fed. 2d 753, cert. den. 50 S. Ct. 88, 280 U. S. 605, 74 L. ed. 649 30

PAGE

Riggs v. Reading, 43 A 212 (Penn.) 15
Ringling Bros. v. Ringling, 29 Del. Ch. 610, 53 A. II 441 26
Rutland Marble Co. v. Ripley, 10 Wall 339, 19 L. Ed. 955 15
Ryan v. McLane, 46 A 340 (Md.) 15

Shubert v. Woodward, 167 Fed. 47, C.C.A. 8th 13
Silverman v. Aderin (N. Y. Sup. Ct. West Co., Young, J.) N. Y. Law Journal 7/27/49 p. 158.. 19
Slonin v. Broadway, 109 N. Y. S. 2d 440 26
State of Kansas ex rel Beck v. Occidental Life Insurance Co., 95 ed. 2d 9F35 (10th Cir.) Cert. den. 59 S. Ct. 63, 305 U. S. 603, 83 L. ed. 383 .. 29

The Mechanics Bank of Alexandria v. Lynn, 7 L. Ed. 185 22
The Pope Mfg. Co. v. Philip Gormully, 144 U. S. 224, p. 236, 36 L. Ed. 414 13
Tracy v. Ginzberg, 205 U. S. 170, 51 L. Ed. 755 27

Weeks v. Pratt, 43 Fed. II 53 (5th Cir. Cert. den. 75 L. ed. 786 16
Wernick v. Gutken, 72 N. Y. S. II 871 19
Willard v. Tayloe, 8 Wall 564, 19 L. Ed. 503 .... 13, 14, 21

STATUTES AND AUTHORITIES CITED.

	PAGE
Beach—"Modern Equity & Jurisprudence" (p. 640 n 5)	12
65 ALR 57	12
49 Am. Jur. Section 58	12
Pomeroy—Specific Performance (3rd Ed. Sec. 185)	14
Pomeroy Eq. Jurisd. (4th Ed.) Sec. 60	20
Restatement Law of Contracts, Sec. 359	21
58 C. J., Sec. 616	23
30 C. J. S., Sec. 602	23
21 C. J., Sec. 849	23
Meck Stockholders Agreement, 47 Y. L. J. 1079, 1087	26
Delaney Stockholders Agreement, 50 C. L. R. 51	26
Hornstein Stockholders Agreements, N. Y. L. J. 4/11/50	26
16 C. J. S. Sec. 625	30